

EXHIBIT 5

PUBLIC VERSION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)

ANTITRUST LITIGATION) NO. 11-CV-2509-LHK

-HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY-

VIDEOTAPED DEPOSITION OF BRANDON MARSHALL

San Francisco, California

Monday, October 22, 2012

Volume I

Reported by:

ASHLEY SOEVYN

CSR No. 12019

Job No. 1541283

PAGES 1 - 341

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1	responses, do you remember indicating in your	11:29:54
2	response how you learned about the Sandhill	11:29:56
3	position?	11:29:58
4	A. I don't know whether I indicated that in my	11:30:00
5	response.	11:30:02
6	Q. You don't recall?	11:30:04
7	A. I don't recall.	11:30:06
8	Q. As you sit here today, you don't recall	11:30:09
9	whether you learned of the Sandhill position through	11:30:12
10	an online recruitment website?	11:30:15
11	A. I don't recall.	11:30:20
12	Q. Have you ever used online recruitment	11:30:21
13	websites?	11:30:25
14	A. Oh, I've used online -- I guess so.	11:30:27
15	Depending on how you characterize "online	11:30:28
16	recruitment," I'd say yes.	11:30:32
17	Q. How would you characterize it?	11:30:33
18	A. Well, I will just tell you the websites	11:30:34
19	that I have used. I have used Dice, Monster, a long	11:30:37
20	time ago. Those ones I haven't used in a while.	11:30:42
21	Hot Jobs was one that was formally a big deal,	11:30:45
22	things like that.	11:30:49
23	Q. Can you list the other websites that you've	11:30:50
24	used?	11:30:52
25	A. More recently I used Indeed. It seems to	11:30:53

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1	be a good one nowadays.	11:30:57
2	Q. Anything else?	11:31:01
3	A. I probably have, but I can't think of any	11:31:02
4	others.	11:31:05
5	Q. Anything else that you've used before that	11:31:05
6	you haven't listed?	11:31:10
7	MR. GLACKIN: Asked and answered.	11:31:12
8	THE WITNESS: I probably have. I don't	11:31:15
9	remember.	11:31:17
10	BY MS. KAHN:	11:31:18
11	Q. And how do you use these websites?	11:31:18
12	A. Each website has its own interface you --	11:31:21
13	some of them -- I think some of them you upload your	11:31:24
14	resume. Oh, I'll tell you another one, LinkedIn.	11:31:29
15	Everybody uses LinkedIn, there you go.	11:31:33
16	Q. Thank you. Anything else comes to mind?	11:31:40
17	A. Just the fact that I'm on LinkedIn like	11:31:42
18	everyone else.	11:31:46
19	Q. So just walk me through how you would use	11:31:48
20	one of these websites. Let's say LinkedIn?	11:31:50
21	A. On LinkedIn, you have people you've worked	11:31:56
22	with in the past that you connect to and that you --	11:31:58
23	they are part of your network, like Facebook for job	11:32:04
24	networking and recruiters ping you on there, too.	11:32:10
25	Q. Recruiters what?	11:32:17

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1	A. Recruiters sometimes send you messages	11:32:18
2	through LinkedIn.	11:32:21
3	Q. Anything else in terms of how you use	11:32:28
4	LinkedIn?	11:32:36
5	A. No, I use it to create a network of former	11:32:39
6	colleagues. Mostly to keep in touch with former	11:32:43
7	colleagues, but also it does have a recruiter aspect	11:32:46
8	to it.	11:32:49
9	Q. How often do you get -- was the word you	11:32:54
10	used "pinged," how often do you get pinged by	11:32:56
11	recruiters?	11:33:02
12	A. It really varies. Again, the same answer	11:33:03
13	as before when you asked me that. You know, in	11:33:04
14	terms of whether I'm looking for a job or not. And	11:33:07
15	I believe all that should be in discovery.	11:33:10
16	Anytime I got a LinkedIn message, it	11:33:13
17	would have gone to my Gmail, and my Gmail is what I	11:33:15
18	provided you, so.	11:33:18
19	Q. As you sit here today, can you give me an	11:33:21
20	estimate of how often that happened?	11:33:24
21	A. No, I can't really give you an estimate.	11:33:26
22	Q. And what kinds of information would a	11:33:34
23	recruiter provide in those messages?	11:33:37
24	A. Very generic information, "Hey, we're	11:33:40
25	looking for somebody to fill this job." And a lot	11:33:46

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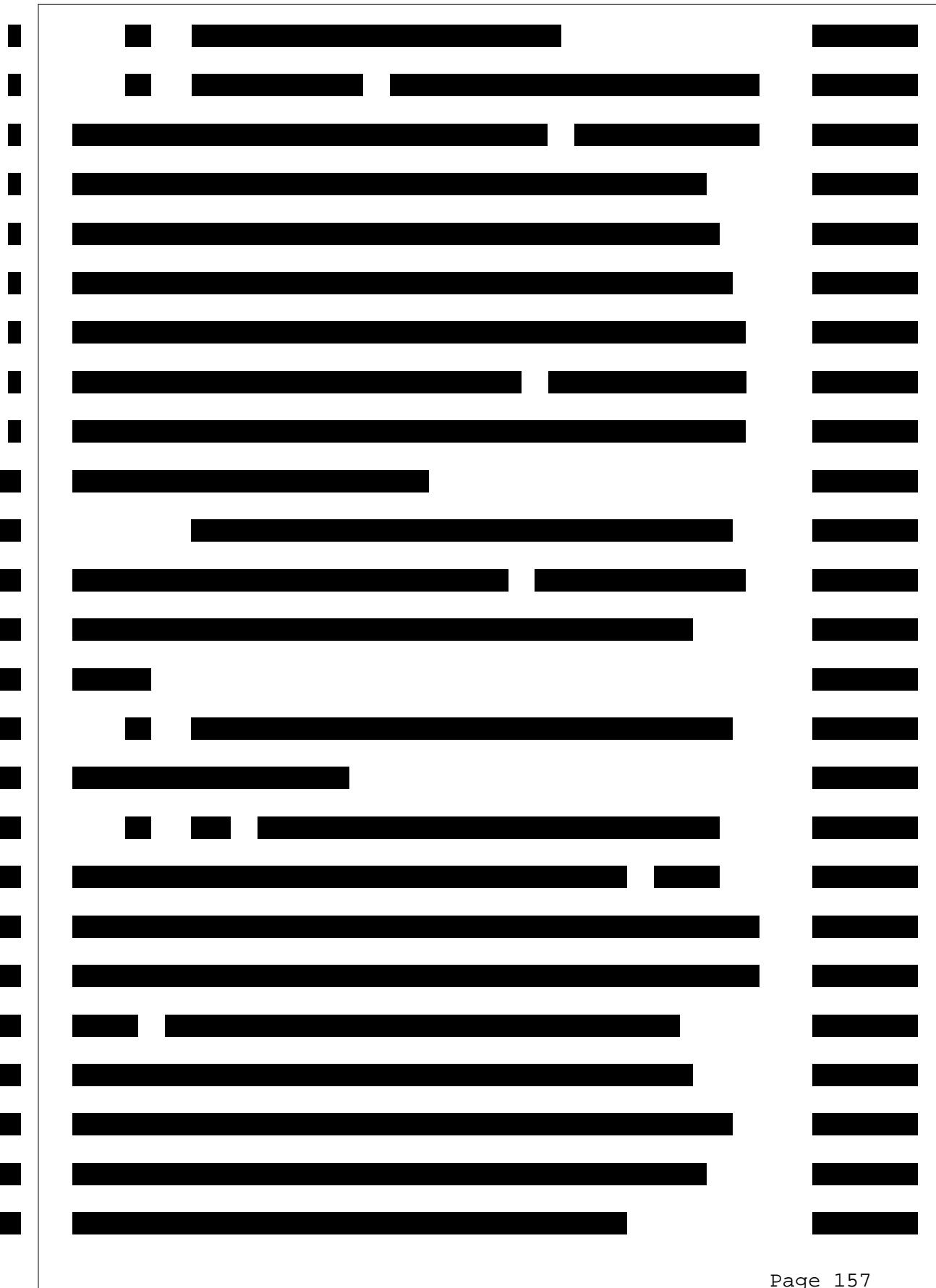
1	Q. When you went on Monster and you had that	11:45:29
2	thought that it's not as robust as the other	11:45:31
3	websites, was it because you had seen additional	11:45:34
4	jobs on other websites that you were not seeing on	11:45:40
5	Monster?	11:45:43
6	A. I don't know.	11:45:47
7	Q. Did you have a sense of what job	11:45:58
8	opportunities were out there, you were just not	11:46:00
9	seeing it on Monster?	11:46:02
10	MR. GLACKIN: Objection, vague.	11:46:03
11	THE WITNESS: No, I did not have a sense of	11:46:05
12	what job opportunities were out there. That's why I	11:46:06
13	was looking online to try to get a sense of what job	11:46:09
14	opportunities were out there.	11:46:13
15	BY MS. KAHN:	11:46:15
16	Q. And is looking online an effective way of	11:46:15
17	finding out about job opportunities?	11:46:17
18	A. It seemed to be a primary way to find out	11:46:19
19	job opportunities. To look online and to network	11:46:23
20	with associates of yours are two primary ways people	11:46:25
21	find jobs.	11:46:32
22	Q. Do you network as a means of finding a job	11:46:44
23	opportunity?	11:46:47
24	A. And also I'd like to amend what I said.	11:46:47
25	When I say "look online," I mean make yourself	11:46:50

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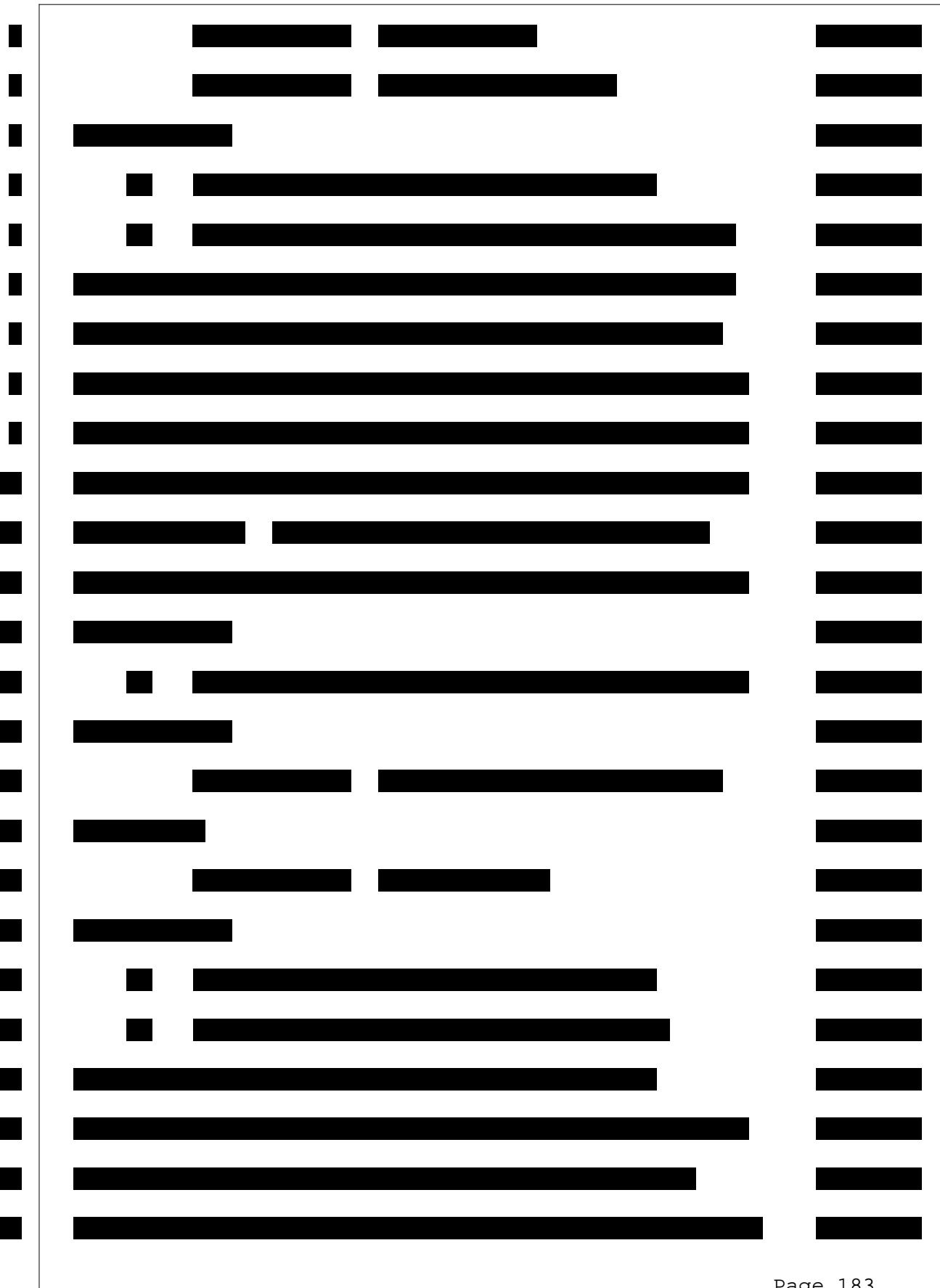
1 do you mean by that? 11:49:54
2 A. I mean that compensation can be paid in a 11:49:55
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
7 corporate -- big company perks and things like that, 11:50:20
8 so they both have their advantages and they're both 11:50:24
9 kind of critical in pieces where you think about 11:50:29
10 where you want to work. Start-ups have more risk 11:50:32
11 and fewer perks. You have to take those into 11:50:38
12 account. 11:50:41
13 Q. Do you have a preference for yourself in 11:50:42
14 terms of what you prefer? 11:50:44
15 A. No, I mean, I prefer -- it's really a 11:50:46
16 complex sort of decision that goes into it. There's 11:50:49
17 a lot of factors. 11:50:52
18 Q. And just going back to the list that you 11:50:57
19 were providing, anything else that you talked to 11:50:59
20 co-workers about job opportunities? 11:51:00
21 A. Commute distance. That's probably 11:51:04
22 important, too. Turned down a job in San Francisco 11:51:07
23 because that was too far. 11:51:12
24 Q. Sorry you have to be here today. 11:51:18
25 A. It's okay. 11:51:20

This image shows a document page where the majority of the text has been removed using black redaction bars. The redacted areas are organized into several horizontal rows. Some rows consist of a single long bar, while others contain multiple shorter bars. There are also a few instances where small, isolated black squares are placed within the redacted sections. The redaction is applied across the width of the page, leaving only a thin vertical margin on the left side.

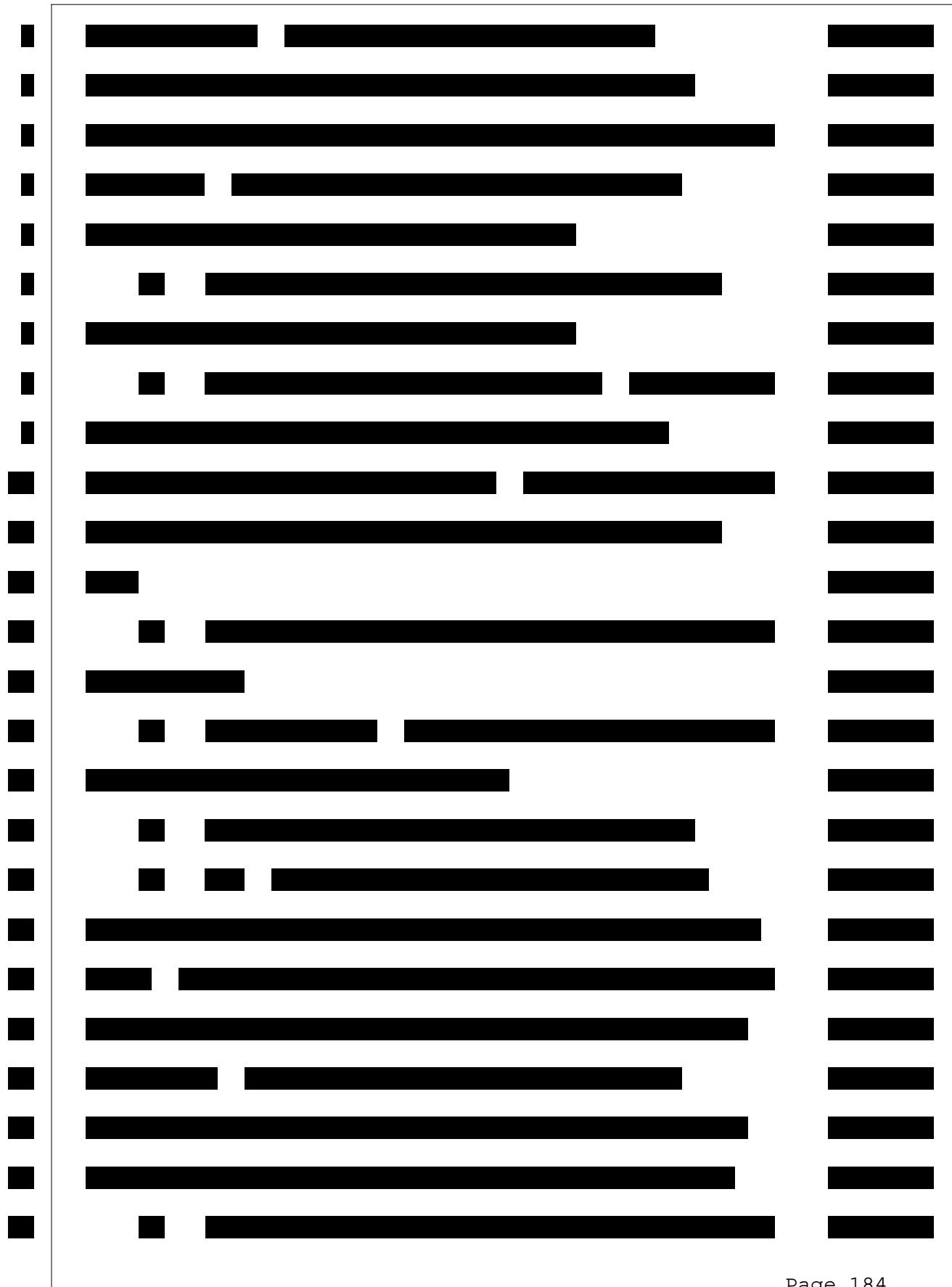
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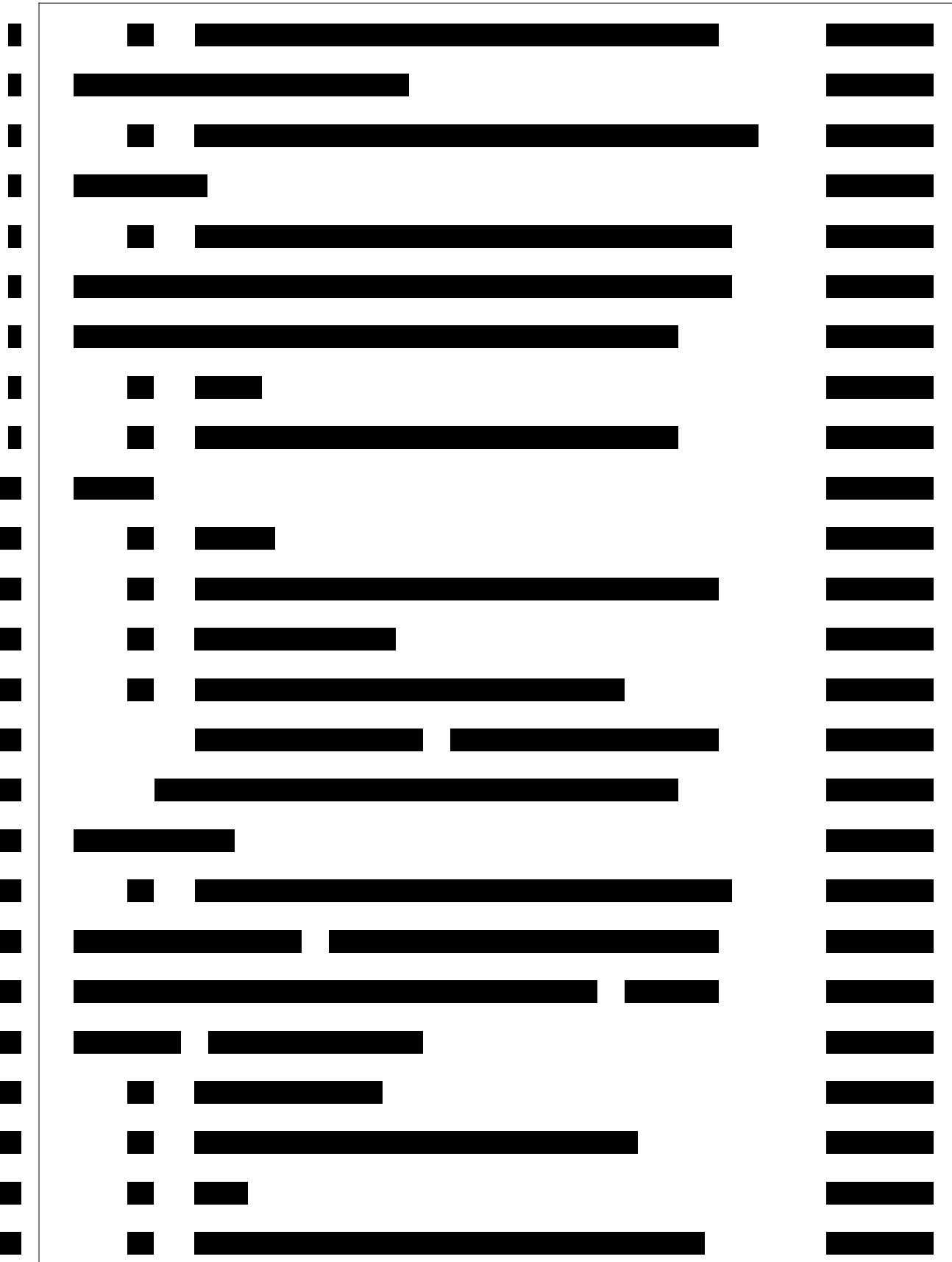
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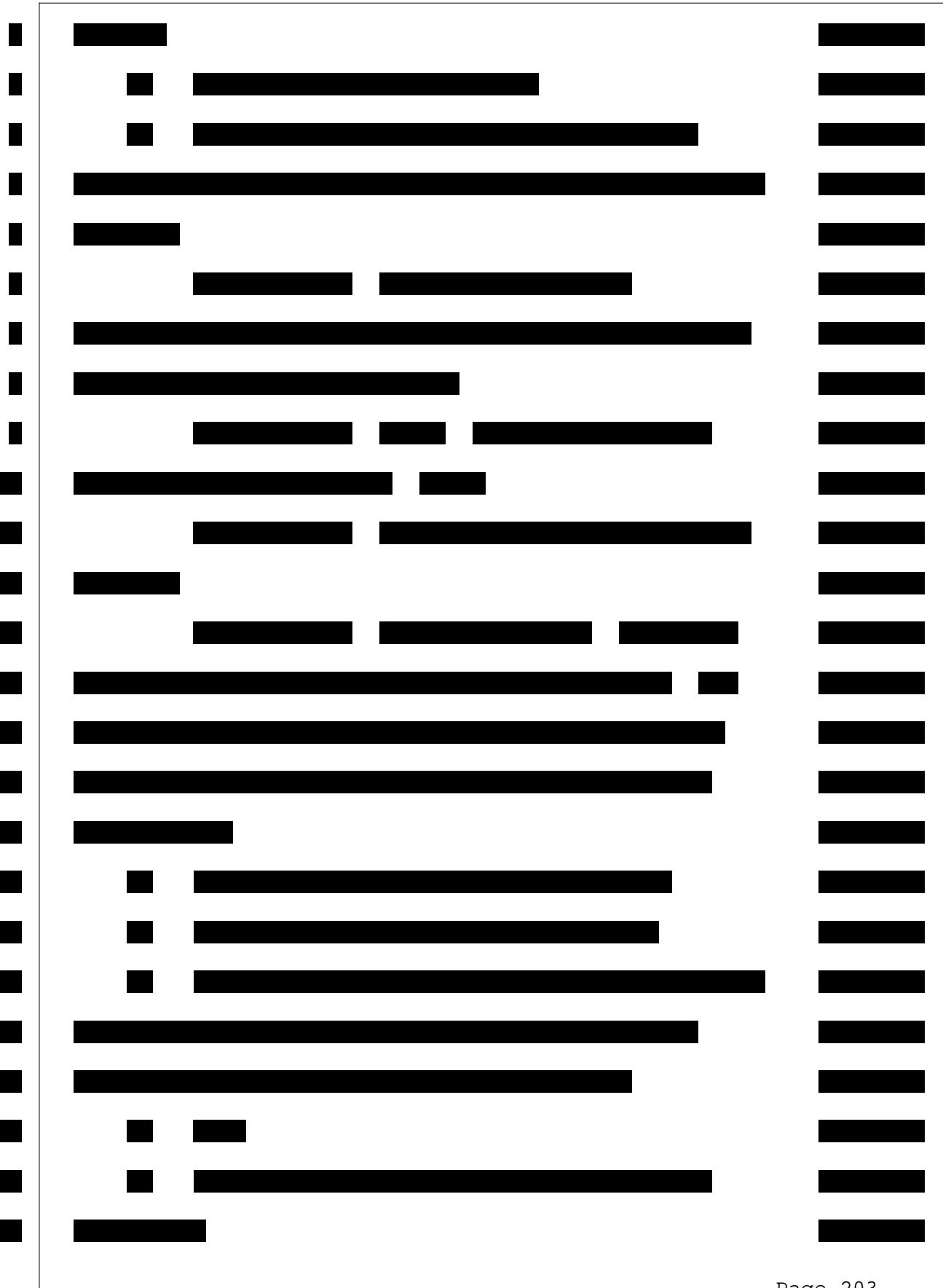
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Page 203

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5 Q. You can put that document aside, thank you. 14:18:44

6 Going back to Modis, when did you start 14:18:57
7 working at Modis; did you say? 14:18:59

8 A. Started working at Modis in August of 14:19:01
9 2005. 14:19:06

10 Q. You received paychecks from Modis? 14:19:07

11 A. I believe so. 14:19:10

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1 a sales position; is that right? 18:06:22
2 A. I don't know who this is reaching out to 18:06:25
3 me. Seems like spam. 18:06:27
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
9 A. Uh-huh. 18:06:44
10 Q. Why did you say you're not willing to cold 18:06:45
11 call people? 18:06:47
12 A. I'm not a person who likes to do anything 18:06:48
13 related to calling people on the phone. I'm an 18:06:56
14 engineer because I want to be the type of person who 18:07:01
15 works on projects, not the type of person who calls 18:07:05
16 people on the phone. I think that this was 18:07:10
17 facetious or sarcastic because this person e-mailed 18:07:12
18 me five times, according to this. And I don't know 18:07:21
19 that I had any serious interest in talking to them 18:07:24
20 about anything. 18:07:28
21 Q. Did you ever set up your spam filter to 18:07:31
22 filter out any e-mails from recruiters? 18:07:34
23 A. I probably set them up to filter out from 18:07:38
24 certain recruiters who would not -- who I didn't 18:07:41
25 think were legitimate recruiters or the ones who 18:07:45

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1 spammed me with, you know, various requests that 18:07:49
2 went, "Hey, do you want to pick up this job in 18:07:51
3 Connecticut?" You know, where I clearly had 18:07:52
4 indicated wherever it was I was looking for a job at 18:07:58
5 the time, but I was not open to relocating to a 18:08:02
6 different state or something like that. So if I -- 18:08:04
7 if I find a recruiter that's not -- at that point I 18:08:05
8 don't even know if I would call them a recruiter or 18:08:08
9 spammer. If someone is sending massive amounts of 18:08:10
10 e-mail that I don't want, I do filter it out. 18:08:15

11 Q. So how would you do that? You would put 18:08:17
12 the specific recruiter in a spam filter? 18:08:20

13 A. I might just put a portion of the 18:08:22
14 recruiter's e-mail in a spam filter. 18:08:24

15 Q. Did you produce documents from your spam 18:08:28
16 folder? 18:08:29

17 A. I've produced all documents, including 18:08:30
18 documents from my spam filter I -- that would -- 18:08:32
19 although, I believe the spam filter probably has an 18:08:35
20 automatic purge function. I believe Gmail does have 18:08:38
21 an automatic purge function for spam after 30 days. 18:08:42
22 So I produced all documents that were available to 18:08:47
23 me which the key words that were indicated and that 18:08:50
24 includ- -- that included any that might have been in 18:08:53
25 the spam filter. 18:08:55

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1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)
3

4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby
5 certify:

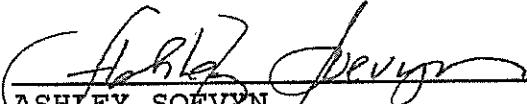
6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my
23 name this 1st day of November, 2012.

24


25 ASHLEY SOEVYN
CSR NO. 12019

Page 341